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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

JOSHUA CHATWIN,

Plaintiff,

v.

DRAPER CITY; DRAPER CITY POLICE  
DEPARTMENT; OFFICER J. PATTERSON,  
in his individual and official capacity;  
OFFICER HEATHER BAUGH, in her  
individual and official capacity; OFFICER  
DAVID HARRIS, in his individual and official  
capacity; OFFICER KURT IMIG, in his  
individual capacity; SUPERVISOR TBA; and  
JOHN DOES 1-10,

Defendants.

Case No.: 2:14-cv-375

Judge: Dale A. Kimball

**PLAINTIFF'S MOTION FOR LEAVE TO FILE AMENDED COMPLAINT AND  
MEMORANDUM OF LAW IN SUPPORT**

Plaintiff Joshua Chatwin respectfully moves the Court, pursuant to Rule 15 of the Federal Rules of Civil Procedure, for leave to file an Amended Complaint, a copy of which is attached

hereto. The new complaint maintains the allegations against the same defendants from the original complaint but more clearly sets out the facts that support each allegation against each defendant. Since the filing of the Complaint, a new fact has come to light, the jurisprudence has made clearer the need for more specificity and for the first time, defense counsel has threatened to file a Motion to Dismiss claiming that the Complaint needs to be more fact specific. Counsel for the Defendants have been provided an advanced copy of the proposed Amended Complaint. As of the time of filing on January 15, 2015, Defendants had not consented to the filing of the Amended Complaint. Therefore, Plaintiff seeks the Court's leave to amend, which should be granted for the reasons set forth below.

### **STATEMENT OF FACT**

On May 15, 2014, Plaintiff filed a complaint for damages resulting from the violation of his civil rights by Draper City, the Draper City Police Department, Chief of the Draper City Police Department, Mac Connole, Officer J. Patterson of the Draper City Police Department, Officer David Harris of the Draper City Police Department, Officer Heather Bough of the Draper City Police Department and John Does 1-10. Plaintiff was arrested on May 18, 2010 in Draper, Utah for suspicion of driving under the influence of alcohol. While in police custody Plaintiff was injured when he was violently thrown to the ground by Defendant, Officer Patterson. Plaintiff was not resisting arrest and was compliant with all orders of the arresting officers, yet he was thrown violently to the ground and was rendered unconscious. Plaintiff sustained additional injuries including loss of hearing in his left ear, loss of blood, contusions and gashes to the head, bleeding in the brain, scarring and a separated shoulder. Plaintiff brings his claims under 42 U.S.C. 1983, state constitutional violations, assault and battery, intentional infliction of emotional distress and fraud against all defendants.

Defendants filed an Answer to the complaint on October 13, 2014 denying the allegations and asserting the affirmative defenses of qualified immunity, governmental immunity and other affirmative defenses to be determined after further discovery. Defendant also objected to citations to documents arising outside the pleadings.

Two new facts have occurred which are relevant to Plaintiff's claims: Plaintiff recently obtained new employment that requires him to use the telephone for most of the day. As a result of the tinnitus in his left ear which arose from the assault, he cannot use the phone with that ear, because he cannot hear the customers.

### **ARGUMENT**

Plaintiff has met the standard for obtaining leave to file an amended complaint under Federal Rule of Civil Procedure 15(a)(2). "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires."

On December 10, 2014, the Court entered a Scheduling Order in this matter. (Rec. Doc. 8) Trial is set for December 5, 2016, nearly two years away. The close of fact discovery is not until December 15, 2015 and the close of expert discovery is not until May 16, 2016. Due to the length of time prior to the conclusion of discovery and the trial date, Defendants will not suffer any undue prejudice by virtue of the Court's allowance of the proposed amended complaint. The interests of justice and judicial economy will undoubtedly be served by having all allegations against the defendants properly before the Court as set forth in Plaintiff's proposed amended complaint. The amendments set forth specific facts that support each allegation made against each Defendant. In doing so, the action can more effectively proceed on the merits.

Defendants cannot be prejudiced by the allowance of the proposed amended complaint. The determination of whether such prejudice would occur often includes assessing whether allowing the amendment would result in additional discovery, cost and preparation to defend against new facts or theories. No written discovery has been exchanged, and depositions have not been taken. The proposed amended complaint does not add any new parties, set forth any new claims or raise new legal theories. Moreover, Plaintiff only alleges two new facts which have recently arisen as a result of his new employment.

Accordingly, in the interest of justice, this Court should grant the Plaintiff's Motion for Leave to file Amended Complaint. The grant of this motion is particularly appropriate here, given the absence of any substantial reason to deny leave to amend.

### **CONCLUSION**

For the reasons identified above, Plaintiff Joshua Chatwin requests that the Court grant Plaintiff's Motion for Leave to File the attached proposed Amended Complaint.

Dated this 15th day of January, 2015.

/s/Lisa A. Marcy  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 15<sup>th</sup> day of January, 2015, I filed the foregoing with the Clerk of Court for the United States District Court for the District of Utah through its CM/ECF system which will automatically send electronic mail notification of such filing to the CM/ECF registered participants as identified on the Electronic Mail Notice List.

/s/Lisa A. Marcy  
Lisa A. Marcy